IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 2824 of 2004

Between:

M/s Kores (India) Ltd., Business Machines and Systems Divisions, Post Box No.1058, 3-5-1089/9, Near YMCA, Narayanaguda, Hyderabad-500 029 rep. By GSS Dutt.

..... PETITIONER

AND

G.Hari Prasad, s/o late Raghavulu, c/o Plot No.780,
Defence Colony, Sainikpuri, Secunderabad-500 094

....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ or order or direction more particularly one in the nature of writ of mandamus, declaring the order in F.A.No.583 of 1999, dated 20-03-2003, on the file of AP State Consumer Disputes Redressal Commission, Hyderabad confirming order in O.P. No.1147 of 1996, dated 4-8-1999, on the file of District Forum II, Hyderabad, as illegal, arbitrary and contrary to law.

Counsel for the Petitioner:MR.V.HARI HARAN

Counsel for the Respondent: MR.S.AGASTYA SHARMA

The Court made the following:

ORDER: (Per BRSR,J)

The petitioner prays for issuance of a writ of *Mandamus* declaring the order in F.A.No.583 of 1999, dated 20.03.2003, on the file of the A.P. State Consumer Disputes Rederssal Commission, Hyderabad (for short "the Commission"), confirming the order in O.P.No.1147 of 1996, dated 04.08.1999, on the file of the District Consumer Forum-II, Hyderabad (for short "the Consumer Forum"), as illegal and arbitrary.

In our considered opinion, no writ of *Mandamus,* as such, lies, but we are not inclined to dismiss the writ petition on that ground. The petitioner ought to have asked for issuance of a writ of *Certiorari* to call for the records and to quash the proceedings. We shall examine as to whether the petitioner made out any case for issuance of a writ of *Certiorari*? and whether the impugned order suffers from any jurisdictional errors or vitiated by any errors apparent on the face of the record?

The respondent/complainant purchased a photo-copier from the petitioner herein for a valid consideration of Rs.90,000/- on 30.03.1996. It is the case of the respondent/complainant that within three days after the installation of the machine, it started giving trouble of one kind or the other requiring the respondent to seek the intervention and assistance of the petitioner herein for 15 times between April, 1996 and June, 1996. That, even, small parts were replaced. Since the trouble had occurred during the warranty period and as the machine was found to be defective, the respondent requested the petitioner to replace the same. The petitioner did not comply with the same. The respondent, in the circumstances, got issued a legal notice, dated 17.07.1996, with a

request either to replace the machine with a new one or return the amount of Rs.90,000/- paid by him towards the sale consideration of the machine with interest. The petitioner did not care to reply. It was under those circumstances, the respondent invoked the jurisdiction of the District Consumer Forum-II, Hyderabad and filed a complaint seeking appropriate relief.

There is no dispute about the sale of the machine and also the fact that the petitioner herein attended 15 times at the request of the respondent, within a period of three months. The main ground on which the petitioner opposed the complaint is that there were no manufacturing defects, as such, and the mere fact that some repairs were to be undertaken, itself is not a ground to hold that the machine suffers from manufacturing defects.

Before the Consumer Forum, as many as 43 documents, Exs.A.1 to A.43, together with three third party affidavits were filed for and on behalf of the respondent. No document was filed on behalf of the petitioner herein. However, learned counsel for the petitioner contended that the petitioner also relies upon the same documents since they are the extracts of reports maintained by the engineers of the petitioner's company, which do not disclose any manufacturing defect.

The Consumer Forum, upon appreciation of the evidence available on record, including Exs.A.1 to A.43, found that the service reports (Exs.A.1 to A.43) indicate the nature of defects of the machine which underwent repairs over
15 times within a period of three months, which according to the Consumer Forum is on account of manufacturing defect. There is no dispute whatsoever that the petitioner herein attended the service promptly, but the fact remains that
in spite of attending the machine on more than
15 occasions, the trouble continued. The Consumer Forum came to the conclusion that the trouble was on account of the inherent defect of the machine. The Consumer Forum also took note of the fact that in the reply

notice, dated 01.08.1996, issued for and on behalf of the petitioner herein it is stated that the company would depute Senior Manager Technical Service to inspect the copier on the spot and for necessary decision regarding the problems faced by the respondent. In the reply notice, the defects that were pointed out by the respondent in his legal notice were not denied. For whatever reason, the petitioner wrote another letter immediately after 01.08.1996 intimating the respondent that the Technical Manager was not allowed to inspect the machine, which was denied by the respondent/complainant. On 14.08.1996, the respondent/complainant again got issued another legal notice demanding refund of the price of the machine together with the damages suffered by him, to which there was no reply. On consideration of those facts, the Consumer Forum found the machine to be defective.

On appeal, the Commission, having reappreciated the evidence, found no error in the order of the Consumer Forum.

In this writ petition, Sri V.Hari Haran, learned counsel for the petitioner strenuously contended that Exs.A.1 to A.43 filed by the respondent disclose no manufacturing defect and that repairs were undertaken on 15 occasions, itself does not raise any presumption as to any inherent manufacturing defect in the machine.

We are not impressed by the above submission made by the learned counsel for the petitioner for more than one reason. We cannot ignore that the machine underwent repairs on more than 15 occasions within a span of three months and in none of the reports, Exs.A.1 to A.43, it is stated that the necessity for the repairs would arise on account of inefficient handling of the machine by the respondent/complainant. In the circumstances, the petitioner now cannot be allowed to contend that the machine underwent repairs on account of the inefficient or defective handling of the machine by the respondent. The Consumer Forum as well as the Commission, upon appreciation of the documentary evidence, concurrently found that the machine suffers from inherent manufacturing defect. The contention that both the Consumer Forum as well as the Commission did not look into the documents is not well-founded, since the very findings are based upon the documents, upon

which reliance has been placed by the respondent/complainant. Reappreciation of evidence in proceedings under Article 226 of the Constitution of India is impermissible unless it is pleaded and established that the findings recorded by the Tribunals below are perverse in their nature. Suffice it to hold that the orders do not suffer from any errors apparent on the face of the record requiring our interference, exercising our *Certiorari* jurisdiction.

We find no merit in this writ petition and the same shall accordingly stand dismissed without any order as to costs, consequently, the interim order, dated 23.02.2004, granted by this Court shall stand vacated.

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B. SUDERSHAN REDDY, J.

Date:07.02.2005

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C.V. RAMULU, J.

GS/GJ

TO

1. The A.P. State Consumer Disputes Redressal Commission, Hyderabad.

2. The district Consumer Forum-II, Hyderabad.

3. G.Hari Prasad, s/o late Raghavulu, c/o Plot No.780, Defence Colony, Sainikpuri, Secunderabad-500 094

4. Two C.D. Copies.